



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

June 4, 2003

Ms. Elaine Sample  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza - 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2003-3820

Dear Ms. Sample:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182387.

The El Paso Police Department (the "department") received a request for (1) audio recordings and printouts of computer-assisted dispatch ("CAD") information from a specified time interval over the night of April 13-14, 2002; (2) "all complaints against [a named individual]"; and (3) supplemental reports from 12 other named individuals.<sup>1</sup> You state that the department has released an incident report and 10 complaint affidavits. You claim that other responsive information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted. We also have considered the comments that we received from the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

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<sup>1</sup>We note that a request for "all complaints against" a named individual ordinarily would implicate the individual's right to privacy, so that any responsive information depicting the individual as a criminal suspect, arrestee, or defendant would be protected from public disclosure under section 552.101 of the Government Code in conjunction with *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, however, the requestor appears to have a special right of access to any information that would otherwise be private under section 552.101. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987). Should the department receive another request from a person who would not have a special right of access to the submitted information, the department should resubmit this same information and request another decision.

We first note that the submitted information does not include any CAD recordings or printouts. We therefore assume that the department also has released any information that is responsive to that aspect of this request, to the extent that the department held or had access to such information when it received this request. If not, then the department must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000). We also note, however, that chapter 552 of the Government Code does not require the department to release information that did not exist when it received this request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ diss'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

We next note that some of the submitted information that the department seeks to withhold does not consist either of a complaint against the first named individual or of a supplemental report from one of the other 12 individuals. To the extent that the submitted information does not consist of such a complaint or supplemental report, it is not responsive to the present request for information. This decision is not applicable to any information that is not responsive to the request, and the department is not required to release that information.

To the extent that the submitted information is responsive to the request, we address the department's claim with respect to that information under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You inform us that the information at issue relates to a pending appeal in a criminal case. You assert that the release of this information would interfere with the appeal and any future prosecution that may be necessary. You also have submitted a letter from the District Attorney for the Thirty-fourth Judicial District, requesting that information related to the appeal be withheld from disclosure. We note, however, that the requestor disputes the department's arguments. The requestor asserts that the pending appeal does not involve the information that she requested. Whether the information at issue relates to the pending appeal is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). Therefore, based on the department's representations, the prosecutor's letter, and our review of the information at issue, we find that section 552.108(a)(1) is

applicable in this instance. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the submitted information that is responsive to this request under section 552.108(a)(1). As we are able to make this determination, we need not address your claims under sections 552.103 and 552.130.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

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<sup>2</sup>We note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

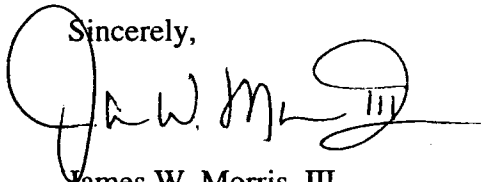
should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large circular flourish at the beginning and a horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 182387

Enc: Submitted documents

c: Ms. Monica Robbins  
308 Yale Avenue  
El Paso, Texas 79907  
(w/o enclosures)